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Attorneys for Witness
MAO CAI SUN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In Re Grand Jury Investigation of
M/V COSCO BUSAN

Case No. 07-90552-MISC-VRW (JCS)

**REPLY BRIEF ON MOTION FOR
RELEASE OF WITNESS MAO CAI SUN
OR, IN THE ALTERNATIVE, TO
COMPEL SCHEDULING OF RULE 15
DEPOSITION**

DATE: May 5, 2008

TIME: 3:30 p.m.

CTRM: A, 15th Floor

Captain Mao Cai Sun hereby replies to the responses filed by the Government and Pilot John Cota to his Motion for Release or, in the Alternative, to Compel Scheduling of Rule 15 Depositions. Captain Sun submits that, while both the government and defendant Cota agree to conduct Rule 15 deposition, their timeframe lacks urgency. The deposition of Captain Sun can and should be concluded by May 31, 2008, and the Court is respectfully requested to so order.

The key fact that forms the basis for this motion, and the urgency in compelling Rule 15 depositions, is that Captain Sun and his crew mates will cease to be paid their salaries on May 31, 2008. This key fact is not addressed in the government's response and made light of in defendant Cota's. As noted in his moving papers, Captain Sun has a family who depends on his income for

1 their sole support. Come June 1, Captain Sun and the other material witnesses, who will at that
2 point already have been detained in San Francisco for almost seven months, will have no means
3 of providing for their families, no income, and no continuity of employment. They will no longer
4 be living together in an apartment and, even with receipt of their statutory material witness fees,
5 most activities other than eating and sleeping will become unaffordable.

6 On the other hand, there is no need for the material witnesses to suffer loss of income,
7 given that their depositions can and should be concluded by May 31. While the filing of an
8 indictment with two felony false statement counts will inevitably delay the trial of defendant Cota
9 until September or October at the earliest,¹ the testimony of the material witnesses goes not to the
10 new charges but to the charges in the complaint filed on March 17, and anticipated for at least
11 weeks prior to that date.² Discovery relevant to those charges should have been provided, and
12 discovery related to the new charges in the indictment should not delay the taking of Rule 15
13 depositions of Captain Sun and the other material witnesses.

14 The government submits that the discovery is “complex and involves a variety of paper
15 navigation charts, electronic navigation charts, radar images, and a voice recorder.” With all due
16 respect, such discovery has been available since last year,³ and there is no legitimate reason why
17 the provision of discovery to the defense should delay the taking of depositions.

18 Captain Sun respectfully submits that a balancing of the competing interests in this matter
19 point decisively to the taking of Rule 15 depositions at the earliest possible time, but in no event
20 later than May 31, 2008. Captain Sun respectfully requests that the Court order his release from
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23 ¹ Especially given the uncertainty of the timing of the trial of defendant Cota, yet to be
24 scheduled, it would be unreasonable to require the material witnesses to remain here until the
time of trial.

25 ² As noted in the moving papers, Rule 15 procedure specifically contemplates and allows
26 Rule 15 depositions to be taken prior to indictment. Captain Sun’s request that his deposition be
taken pursuant to Rule 15 predates the filing of his motion by many weeks, if not months.

27 ³ Even the press received access to the voice date recorder transcript several weeks ago, if
28 not earlier. Electronic tracking charts of the vessel’s course are public records and have been
available since the days after the allision, almost six months ago.

1 the jurisdiction of this Court on or by May 31, 2008, and order the government to pay for his
2 travel home on or before that date.

3 DATED: April 28, 2008

Respectfully submitted,

4 SCHWARTZ & CERA LLP

5
6 /s/
7 DOUGLAS R. SCHWARTZ
8 PETRA M. REINECKE
9 Attorneys for Witness
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